



STATE OF NEW JERSEY

In the Matter of Leisha Maldonado,
Correctional Police Officer (S9988V),
Statewide

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2019-2001

List Removal Appeal

ISSUED: JUNE 14, 2019 (SLK)

Leisha Maldonado appeals her removal from the eligible list for Correctional Police Officer (S9988V), Statewide on the basis that she possessed an unsatisfactory criminal background.

The appellant took the open competitive examination for Correctional Police Officer (S9988V), which had an May 31, 2017 closing date, achieved a passing score, and was ranked on the subsequent eligible list. In seeking her removal, the appointing authority indicated that the appellant possessed an unsatisfactory criminal background. Specifically, the appointing authority indicated that on April 20, 2016, the appellant was charged with *N.J.S.A. 2C:35-10a(4)*, possession of 50 grams or less of marijuana, and *N.J.S.A. 2C:36-2*, use or possession of a controlled dangerous substance with intent to use. The charges were dismissed through the completion of a diversionary program and the payment of a fine.

On appeal, the appellant states that on the night of the incident, she was pulled over while driving because of tinted windows and a broken tail light. She presents that it was the first time in her 25 years of life that she had been arrested. The appellant explains that she gave an acquaintance a ride home within minutes before being pulled over. She states that her passenger left the marijuana behind and she had no evidence to prove that it was not hers. The appellant indicates that the charges were downgraded and dismissed after she successfully completed a diversionary program in half the time allotted. She asserts that she never tested

positive for marijuana and never will as she is a single mother with three children who is striving for greatness. The appellant explains that she recently lost her children's father due to a motorcycle accident, which only pushes her to work harder on behalf of her children. She states that the incident was the worst day of her life because she let her children down by putting her career in jeopardy as it has always been her dream to be a Correctional Police Officer and serve the community.

In response, the appointing authority presents its criteria for removal which includes a conviction (expunged or not) for possession, and/or sale of a controlled dangerous substance (*N.J.S.A. 2C:35* or Title 24). It states that is unable to ascertain the level and extent of the appellant's rehabilitation based on the information presented. Therefore, the appointing authority believes that the appellant is not a suitable candidate.

CONCLUSION

N.J.S.A. 11A:4-11 and *N.J.A.C. 4A:4-4.7(a)4* provide that an eligible's name may be removed from an eligible list when an eligible has a criminal record which includes a conviction for a crime which adversely relates to the employment sought. The following factors may be considered in such determination:

- a. Nature and seriousness of the crime;
- b. Circumstances under which the crime occurred;
- c. Date of the crime and age of the eligible when the crime was committed;
- d. Whether the crime was an isolated event; and
- e. Evidence of rehabilitation.

The presentation to an appointing authority of a pardon or expungement shall prohibit an appointing authority from rejecting an eligible based on such criminal conviction, except for law enforcement, correction officer, juvenile detention officer, firefighter or judiciary titles and other titles as the Chairperson of the Civil Service Commission (Commission) or designee may determine. It is noted that the Appellate Division of the Superior Court remanded the matter of a candidate's removal from a Police Officer eligible list to consider whether the candidate's arrest adversely related to the employment sought based on the criteria enumerated in *N.J.S.A. 11A:4-11*. See *Tharpe v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992).

Further, participation in a diversionary program is neither a conviction nor an acquittal. See *N.J.S.A. 2C:43-13(d)*. See also *Grill and Walsh v. City of Newark Police Department*, Docket No. A-6224-98T3 (App. Div. January 30, 2001); *In the Matter of Christopher J. Ritoch* (MSB, decided July 27, 1993). In *Grill, supra*, the Appellate Division indicated that the diversionary program provides a channel to resolve a criminal charge without the risk of conviction; however, it has not been construed to constitute a favorable termination. Furthermore, while an arrest is not an admission

of guilt, it may warrant removal of an eligible's name where the arrest adversely relates to the employment sought. Thus, the appellant's arrest and entry into a diversionary program could still be properly considered in removing his name from the subject eligible list. *Compare In the Matter of Harold Cohrs* (MSB, decided May 5, 2004) (Removal of an eligible's name reversed due to length of time that had elapsed since his completion of his diversionary program).

N.J.A.C. 4A:4-6.3(b), in conjunction with *N.J.A.C. 4A:4-4.7(d)*, provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his or her name from an eligible list was in error.

Initially, although the appointing authority argues that the appellant violated its criteria for removal, the Commission notes that it was not bound by criteria utilized by the appointing authority and must decide each list removal on the basis of the record presented. *See In the Matter of Debra Dygon* (MSB, decided May 23, 2000).

In the instant matter, a review of the record indicates that the appointing authority had a valid reason to remove the appellant's name from the list. Specifically, the appellant was charged with offenses related to the possession of marijuana. Further, the appellant does not deny that there was marijuana in her car. Instead, she explains that it was left in her car by her passenger. In other words, either the appellant made a poor judgment by possessing an illegal controlled dangerous substance or allowing someone in her vehicle who possessed an illegal controlled dangerous substance. In this regard, it is recognized that a Correctional Police Officer is a law enforcement employee who must help keep order in the prisons and promote adherence to the law. Correctional Police Officers, like municipal Police Officers, hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. *See Moorestown v. Armstrong*, 89 *N.J. Super.* 560 (App. Div. 1965), cert. denied, 47 *N.J.* 80 (1966). *See also In re Phillips*, 117 *N.J.* 567 (1990). The public expects Correctional Police Officers to present a personal background that exhibits respect for the law and rules. Moreover, as this incident took place a little more than one year prior to the May 31, 2017 closing date, there was insufficient time for her to demonstrate rehabilitation.

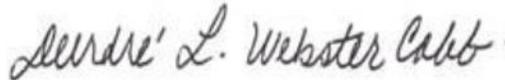
Accordingly, the appellant has not met her burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Correctional Police Officer (S9988V), Statewide eligible list. The Commission notes, however, that with the further passage of time, and absent any further adverse incidents, the appellant's background as presented in this matter will be insufficient to remove her name from future similar lists.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 12th DAY OF JUNE, 2019



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals
& Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Leisha Maldonado
Lisa Gaffney
Kelly Glenn